

## REMARKS

### 1. Preliminary Matters

#### a. Status of the Claims

Claims 26, 31, 33, and 35-40 are pending in this application. In order to expedite prosecution and without prejudice to seeking the canceled subject matter in a continuing application, claims 38-40 are hereby canceled. Applicant respectfully requests entry of the amendments and remarks made herein into the file history of the present application. Upon entry of these amendments, claims 26, 31, 33, and 35-37 will be pending and under active consideration.

#### b. Amendments to the Claims

In order to expedite prosecution and without prejudice to seeking claimed subject matter in a continuing application, claims 38-40 are canceled without prejudice.

### 2. Patentability Remarks

#### a. 35 U.S.C. § 102(e)

On pages 2 and 3 of the Office Action, the Examiner rejects claims 26, 31 and 33 under 35 U.S.C. § 102(e) as allegedly being anticipated by Pfeffer *et al.* (U.S. Pat. Pub. No. 20050222067; hereafter “Pfeffer”). Specifically, the Examiner asserts that SEQ ID NO: 82 of Pfeffer is identical to instant SEQ ID NO: 4204050. However, Pfeffer is an improper § 102(e) reference and is not prior art.

The alleged § 102(e) Pfeffer reference is a continuation-in-part of U.S. Pat. App. No. 10/925,363, which was filed on August 24, 2004, which is a continuation-in-part of U.S. Pat. App. No. 10/819,098, which was filed on April 5, 2004. Accordingly, the earliest possible § 102(e) date for Pfeffer is April 5, 2004.<sup>1</sup>

The instant application claims priority to Intl. App. No. PCT/IL03/009998, which was filed on November 26, 2003 (the “Priority Application”). *See* paragraph 0001 of the instant specification as filed and the filing receipt that was mailed on April 25, 2005 for the instant application. A sequence identical to instant SEQ ID NO: 4204050 is disclosed in the Priority Application as SEQ ID NO: 1073. Accordingly, the priority date of the claimed nucleic acids is November 26, 2003, which predates Pfeffer’s earliest possible priority date by more than four months. Consequently, Applicant submits that Pfeffer is an improper § 102(e) reference. In view of the foregoing, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of the claims under 35 U.S.C. § 102(e) in view of Pfeffer.

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<sup>1</sup> The Examiner has failed to demonstrate whether SEQ ID NO: 82 of Pfeffer is disclosed in either of the priority applications.

**b. 35 U.S.C. § 103(a)**

On pages 3 and 4 of the Office Action, the Examiner rejects claims 35-40 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Pfeffer. The Examiner asserts that it would have been obvious to make any 10-50 base fragment of SEQ ID NO: 82 of Pfeffer to arrive at instant SEQ ID NOs: 117937 or 118171. As discussed above, Pfeffer is an improper § 102(e) reference and cannot properly be used under § 103(a).

Instant SEQ ID NOs: 4204050 and 117937 are disclosed as SEQ ID NOs: 1073 and 2933, respectively, in the Priority Application (filed November 26, 2003). As stated above, the filing date of the Priority Application predates the earliest possible priority date of Pfeffer (April 5, 2004). In view of the foregoing, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of the claims under 35 U.S.C. § 103(a) in view of Pfeffer.

**3. Conclusion**

Applicant respectfully submits that the instant application is in good and proper order for allowance and early notification to this effect is solicited. If, in the opinion of the Examiner, a telephone conference would expedite prosecution of the instant application, the Examiner is encouraged to call the undersigned at the number listed below.

Respectfully submitted,

POLSINELLI SHALTON FLANIGAN SUELTHAUS PC

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On behalf of: Teddy C. Scott, Jr., Ph.D.  
Registration No. 53,573

By: /Paul A. Jenny/  
Paul A. Jenny  
Registration No. 59,014  
Customer No. 37808

POLSINELLI SHALTON FLANIGAN SUELTHAUS PC  
180 N. Stetson Ave., Suite 4525  
Chicago, IL 60601  
312.819.1900 (main)  
312.602.3955 (E-fax)  
312.873.3613 (direct)